



## UNITED STATES PATENT AND TRADEMARK OFFICE

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APR 29 2004

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2600

DECISION  
ON PETITION

In re Application of:

Kunze et al.

Application No. 09/674,669

Filed: November 2, 2000

For: CHANGING GEAR IN A DISC PLAYBACK  
UNIT WITH TWO ALTERNATE DRIVE  
OUTPUTS

This is a response to the request for withdrawal of the notice of abandonment, received December 24, 2003. The petition is being treated under 37 CFR 1.8(b) to withdraw the holding of abandonment.

*The petition is granted.*

This application became abandoned for failure to timely file a response to the April 23, 2003 Office action, which set a shortened statutory period of three (3) months to reply. That period lapsed without reply, rendering this application abandoned as of July 23, 2003. A Notice of Abandonment was mailed on November 28, 2003.

Petitioner alleges to have timely filed a response to the Office action on April 23, 2003. To support this position, Petitioner has included with the instant petition, a statement from Ms. Linda Cuccia (w/Account Detail Report); a post card itemization which lists: an amendment under 37 C.F.R. §1.111 and Certificate of Mailing by First Class mail; and copies of each of the items listed on the post card. The post card is not date stamped as having been received by the USPTO and therefore does not serve as prima facie evidence of receipt of the items listed. However, an itemized list of items submitted was included which contained a certificate of mailing.

37 C.F.R. § 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Petitioner has met the requirements above. Accordingly, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The application will be forwarded to the Technology Center's technical support staff for entry of the response. From there, the file will be forwarded to the examiner for consideration in due course.

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